

Assembly Bill No. 1358

Passed the Assembly September 2, 2015

Chief Clerk of the Assembly

Passed the Senate August 31, 2015

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2015, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to add Section 17250.55 to, and to amend, repeal, and add Chapter 2.5 (commencing with Section 17250.10) of Part 10.5 of Division 1 of Title 1 of, the Education Code, and to repeal Section 4 of Chapter 421 of the Statutes of 2001, relating to school facilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 1358, Dababneh. School facilities: design-build contracts.

Existing law authorizes the governing board of a school district, until January 1, 2020, and upon a determination by the governing board of the school district that it is in the best interest of the school district, to enter into a design-build contract for both the design and construction of a school facility if that expenditure exceeds \$2,500,000, as provided.

This bill would make those provisions inoperative on July 1, 2016, and as of that date would instead authorize, until January 1, 2025, a school district, with the approval of the governing board of the school district, to procure design-build contracts for public works projects in excess of \$1,000,000, awarding the contract to either the low bid or the best value, as provided. The bill would require specified information to be verified under penalty of perjury. By expanding the crime of perjury, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 17250.55 is added to the Education Code, to read:

17250.55. This chapter shall become inoperative on July 1, 2016, and, as of January 1, 2017, is repealed, unless a later enacted

statute, that becomes operative on or before January 1, 2017, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 2. Chapter 2.5 (commencing with Section 17250.10) is added to Part 10.5 of Division 1 of Title 1 of the Education Code, to read:

CHAPTER 2.5. DESIGN-BUILD CONTRACTS

17250.10. (a) The Legislature finds and declares that the design-build method of project delivery, using a best value procurement methodology, has been authorized for various agencies that have reported benefits from those projects, including reduced project costs, expedited project completion, and design features that are not achievable through the traditional design-bid-build method.

(b) It is the intent of the Legislature that:

(1) This chapter provide general authorization for school districts to use the design-build method for projects.

(2) This chapter shall not be deemed to express a preference for the design-build method over other procurement methodologies.

17250.15. For purposes of this chapter, the following definitions apply:

(a) (1) “Best value” means a value determined by evaluation of objective criteria that may include, but are not limited to, price, features, functions, life-cycle costs, experience, and past performance.

(2) A best value determination may involve the selection of the lowest cost proposal meeting the interests of the school district and the objectives of the project, selection of the best proposal for a stipulated sum established by the procuring school district, or a tradeoff between price and other factors.

(b) “Construction subcontract” means a subcontract awarded by the design-build entity to a subcontractor that will perform work or labor or will render service to the design-build entity in or about the construction of the work or improvement, or a subcontractor licensed by the state which, under subcontract to the design-build entity, specially fabricates and installs a portion of the work or improvement according to detailed drawings contained in the plans and specifications produced by the design-build team.

(c) “Design-build” means a project delivery process in which both the design and construction of a project are procured from a single entity.

(d) “Design-build entity” means a corporation, limited liability company, partnership, joint venture, or other legal entity that is able to provide appropriately licensed contracting, architectural, and engineering services, as needed, pursuant to a design-build contract.

(e) (1) “Design-build team” means the design-build entity and the individuals or other entities identified by the design-build entity as members of its team.

(2) Members shall include the general contractor and, if utilized in the design of the project, all electrical, mechanical, and plumbing contractors.

(f) “Project” means the construction of any school facility.

17250.20. (a) A school district, with approval of its governing board, may procure design-build contracts for projects in excess of one million dollars (\$1,000,000), awarding the contract to either the low bid or the best value.

(b) The school district shall develop guidelines for a standard organizational conflict-of-interest policy, consistent with applicable law, regarding the ability of a person or entity that performs services for the school district relating to the solicitation of a design-build project, to submit a proposal as a design-build entity, or to join a design-build team. This conflict-of-interest policy shall apply to each school district entering into design-build contracts authorized under this chapter.

(c) This chapter shall apply to bid requests issued on or after July 1, 2016.

17250.25. The procurement process for design-build projects shall progress as follows:

(a) (1) The school district shall prepare a set of documents setting forth the scope and estimated price of the project. The documents may include, but are not limited to, the size, type, and desired design character of the project, performance specifications covering the quality of materials, equipment, workmanship, preliminary plans or building layouts, or any other information deemed necessary to describe adequately the school district’s needs. The performance specifications and any plans shall be

prepared by a design professional who is duly licensed and registered in California.

(2) The documents shall not include a design-build-operate contract for a project. The documents, however, may include operations during a training or transition period, but shall not include long-term operations for a project.

(b) The school district shall prepare and issue a request for qualifications in order to prequalify, or develop a short-list of, the design-build entities whose proposals shall be evaluated for final selection. The request for qualifications shall include, but is not limited to, all of the following elements:

(1) Identification of the basic scope and needs of the project or contract, the expected cost range, the methodology that will be used by the school district to evaluate proposals, the procedure for final selection of the design-build entity, and any other information deemed necessary by the school district to inform interested parties of the contracting opportunity.

(2) Significant factors that the school district reasonably expects to consider in evaluating qualifications, including technical design and construction expertise, acceptable safety record, and all other nonprice-related factors.

(3) A standard template request for statements of qualifications prepared by the school district. In preparing the standard template, the school district may consult with the construction industry, the building trades and surety industry, and other school districts interested in using the authorization provided by this chapter. The template shall require the following information:

(A) If the design-build entity is a privately held corporation, limited liability company, partnership, or joint venture, a listing of all of the shareholders, partners, or members known at the time of statement of qualification submission who will perform work on the project.

(B) Evidence that the members of the design-build team have completed, or demonstrated the experience, competency, capability, and capacity to complete, projects of similar size, scope, or complexity, and that the proposed key personnel have sufficient experience and training to competently manage and complete the design and construction of the project, and a financial statement that ensures that the design-build entity has the capacity to complete the project.

(C) The licenses, registration, and credentials required to design and construct the project, including, but not limited to, information on the revocation or suspension of any license, credential, or registration.

(D) Evidence that establishes that the design-build entity has the capacity to obtain all required payment and performance bonding, liability insurance, and errors and omissions insurance.

(E) Information concerning workers' compensation experience history and a worker safety program.

(F) If the proposed design-build entity is a corporation, limited liability company, partnership, joint venture, or other legal entity, a copy of the organizational documents or agreement committing to form the organization.

(G) An acceptable safety record. A proposer's safety record shall be deemed acceptable if its experience modification rate for the most recent three-year period is an average of 1.00 or less, and its average total recordable injury or illness rate and average lost work rate for the most recent three-year period does not exceed the applicable statistical standards for its business category, or if the proposer is a party to an alternative dispute resolution system, as provided for in Section 3201.5 of the Labor Code.

(4) (A) The information required under this subdivision shall be certified under penalty of perjury by the design-build entity and its general partners or joint venture members.

(B) Information required under this subdivision that is not otherwise a public record under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) shall not be open to public inspection.

(c) A design-build entity shall not be prequalified or shortlisted unless the entity provides an enforceable commitment to the school district that the entity and its subcontractors at every tier will use a skilled and trained workforce to perform all work on the project or contract that falls within an apprenticeable occupation in the building and construction trades.

(1) For purposes of this subdivision:

(A) "Apprenticeable occupation" means an occupation for which the Chief of the Division of Apprenticeship Standards had approved an apprenticeship program pursuant to Section 3075 of the Labor Code before January 1, 2014.

(B) “Skilled and trained workforce” means a workforce that meets all of the following conditions:

(i) All the workers are either skilled journeypersons or apprentices registered in an apprenticeship program approved by the Chief of the Division of Apprenticeship Standards.

(ii) (I) As of July 1, 2016, at least 20 percent of the skilled journeypersons employed to perform work on the contract or project by the entity and each of its subcontractors at every tier are graduates of an apprenticeship program for the applicable occupation that was either approved by the Chief of the Division of Apprenticeship Standards pursuant to Section 3075 of the Labor Code or located outside California and approved for federal purposes pursuant to the apprenticeship regulations adopted by the federal Secretary of Labor.

(II) As of July 1, 2017, at least 30 percent of the skilled journeypersons employed to perform work on the contract or project by the entity and each of its subcontractors at every tier are graduates of an apprenticeship program for the applicable occupation that was either approved by the Chief of the Division of Apprenticeship Standards pursuant to Section 3075 of the Labor Code or located outside California and approved for federal purposes pursuant to the apprenticeship regulations adopted by the federal Secretary of Labor.

(III) As of July 1, 2018, at least 40 percent of the skilled journeypersons employed to perform work on the contract or project by the entity and each of its subcontractors at every tier are graduates of an apprenticeship program for the applicable occupation that was either approved by the Chief of the Division of Apprenticeship Standards pursuant to Section 3075 of the Labor Code or located outside California and approved for federal purposes pursuant to the apprenticeship regulations adopted by the federal Secretary of Labor.

(IV) As of July 1, 2019, at least 50 percent of the skilled journeypersons employed to perform work on the contract or project by the entity and each of its subcontractors at every tier are graduates of an apprenticeship program for the applicable occupation that was either approved by the Chief of the Division of Apprenticeship Standards pursuant to Section 3075 of the Labor Code or located outside California and approved for federal

purposes pursuant to the apprenticeship regulations adopted by the federal Secretary of Labor.

(V) As of July 1, 2020, at least 60 percent of the skilled journeypersons employed to perform work on the contract or project by the entity and each of its subcontractors at every tier are graduates of an apprenticeship program for the applicable occupation that was either approved by the Chief of the Division of Apprenticeship Standards pursuant to Section 3075 of the Labor Code or located outside California and approved for federal purposes pursuant to the apprenticeship regulations adopted by the federal Secretary of Labor.

(iii) For an apprenticeable occupation in which no apprenticeship program had been approved by the Chief of the Division of Apprenticeship Standards before January 1, 1995, up to one-half of the graduation percentage requirements of clause (ii) may be satisfied by skilled journeypersons who commenced working in the apprenticeable occupation prior to the chief's approval of an apprenticeship program for that occupation in the county in which the project is located.

(C) "Skilled journeyman" means a worker who either:

(i) Graduated from an apprenticeship program for the applicable occupation that was approved by the Chief of the Division of Apprenticeship Standards or located outside California and approved for federal purposes pursuant to the apprenticeship regulations adopted by the federal Secretary of Labor.

(ii) Has at least as many hours of on-the-job experience in the applicable occupation as would be required to graduate from an apprenticeship program for the applicable occupation that is approved by the chief.

(2) An entity's commitment that a skilled and trained workforce will be used to perform the project or contract may be established by any of the following:

(A) The entity's agreement with the school district that the entity and its subcontractors at every tier will comply with the requirements of this subdivision and that the entity will provide the school district with evidence, on a monthly basis while the project or contract is being performed, that the entity and its subcontractors are complying with the requirements of this subdivision.

(B) If the school district has entered into a project labor agreement that will bind all contractors and subcontractors performing work on the project or contract and that includes the requirements of this subdivision, the entity's agreement that it will become a party to that project labor agreement.

(C) Evidence that the entity has entered into a project labor agreement that includes the requirements of this subdivision and that will bind the entity and all its subcontractors at every tier performing the project or contract.

(d) Based on the documents prepared as described in subdivision (a), the school district shall prepare a request for proposals that invites prequalified or short-listed entities to submit competitive sealed proposals in the manner prescribed by the school district. The request for proposals shall include, but need not be limited to, the following elements:

(1) Identification of the basic scope and needs of the project or contract, the estimated cost of the project, the methodology that will be used by the school district to evaluate proposals, whether the contract will be awarded on the basis of low bid or best value, and any other information deemed necessary by the school district to inform interested parties of the contracting opportunity.

(2) Significant factors that the school district reasonably expects to consider in evaluating proposals, including, but not limited to, cost or price and all nonprice-related factors.

(3) The relative importance or the weight assigned to each of the factors identified in the request for proposals.

(4) Where a best value selection method is used, the school district may reserve the right to request proposal revisions and hold discussions and negotiations with responsive proposers, in which case the school district shall so specify in the request for proposals and shall publish separately or incorporate into the request for proposals applicable procedures to be observed by the school district to ensure that any discussions or negotiations are conducted in good faith.

(e) For those projects utilizing low bid as the final selection method, the competitive bidding process shall result in lump-sum bids by the prequalified or short-listed design-build entities, and awards shall be made to the design-build entity that is the lowest responsible bidder.

(f) For those projects utilizing best value as a selection method, the design-build competition shall progress as follows:

(1) Competitive proposals shall be evaluated by using only the criteria and selection procedures specifically identified in the request for proposals. The following minimum factors, however, shall be weighted as deemed appropriate by the school district:

- (A) Price, unless a stipulated sum is specified.
- (B) Technical design and construction expertise.
- (C) Life-cycle costs over 15 or more years.

(2) Pursuant to subdivision (d), the school district may hold discussions or negotiations with responsive proposers using the process articulated in the school district's request for proposals.

(3) When the evaluation is complete, the responsive proposers shall be ranked based on a determination of value provided, provided that no more than three proposers are required to be ranked.

(4) The award of the contract shall be made to the responsible design-build entity whose proposal is determined by the school district to have offered the best value to the public.

(5) Notwithstanding any other provision of law, upon issuance of a contract award, the school district shall publicly announce its award, identifying the design-build entity to which the award is made, along with a statement regarding the basis of the award.

(6) The statement regarding the school district's contract award, described in paragraph (5), and the contract file shall provide sufficient information to satisfy an external audit.

17250.30. (a) The design-build entity shall provide payment and performance bonds for the project in the form and in the amount required by the school district, and issued by a California admitted surety. The amount of the payment bond shall not be less than the amount of the performance bond.

(b) The design-build contract shall require errors and omissions insurance coverage for the design elements of the project.

(c) The school district shall develop a standard form of payment and performance bond for its design-build projects.

17250.35. The school district, in each design-build request for proposals, may identify specific types of subcontractors that must be included in the design-build entity statement of qualifications and proposal. All construction subcontractors that are identified in the proposal shall be afforded all the protections of Chapter 4

(commencing with Section 4100) of Part 1 of Division 2 of the Public Contract Code.

(a) Following award of the design-build contract, the design-build entity shall proceed as follows in awarding construction subcontracts with a value exceeding one-half of 1 percent of the contract price allocable to construction work:

(1) Provide public notice of availability of work to be subcontracted in accordance with the publication requirements applicable to the competitive bidding process of the school district, including a fixed date and time on which qualifications statements, bids, or proposals will be due.

(2) Establish reasonable qualification criteria and standards.

(3) Award the subcontract either on a best value basis or to the lowest responsible bidder. The process may include prequalification or short-listing. The foregoing process does not apply to construction subcontractors listed in the original proposal. Subcontractors awarded construction subcontracts under this subdivision shall be afforded all the protections of Chapter 4 (commencing with Section 4100) of Part 1 of Division 2 of the Public Contract Code.

17250.40. (a) If the school district elects to award a project pursuant to this chapter, retention proceeds withheld by the school district from the design-build entity shall not exceed 5 percent.

(b) In a contract between the design-build entity and a subcontractor, and in a contract between a subcontractor and any subcontractor thereunder, the percentage of the retention proceeds withheld may not exceed the percentage specified in the contract between the school district agency and the design-build entity. If the design-build entity provides written notice to any subcontractor that is not a member of the design-build entity, prior to or at the time the bid is requested, that a bond may be required and the subcontractor subsequently is unable or refuses to furnish a bond to the design-build entity, then the design-build entity may withhold retention proceeds in excess of the percentage specified in the contract between the school district and the design-build entity from any payment made by the design-build entity to the subcontractor.

17250.45. Nothing in this chapter affects, expands, alters, or limits any rights or remedies otherwise available at law.

17250.50. This chapter shall become operative on July 1, 2016.

17250.55. This chapter shall remain in effect only until January 1, 2025, and as of that date is repealed, unless a later enacted statute, that takes effect before January 1, 2025, deletes or extends that date.

SEC. 3. Section 4 of Chapter 421 of the Statutes of 2001, as amended by Section 5 of Chapter 736 of the Statutes of 2012, is repealed.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Approved _____, 2015

Governor